

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

Charles Mendes
Plaintiff

V.
Osprey Ship Management, Inc. and
United States of America,
Defendants

05 10912 DPW

RECEIPT # _____
Civil Action No. _____
COUNT \$ N/A
SUMMONS ISSUED 2
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. JLF
DATE 5/3/05

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Now comes the Plaintiff in the above-entitled matter and for his complaint states:

MAGISTRATE JUDGE

PARTIES

1. The Plaintiff, Charles Mendes, is a resident of 4001 North Main Street, Fall River, MA 02720.
2. The Defendant, Osprey Ship Management, Inc., is a corporation, duly organized and existing under the laws of the State of Maryland with a principal place of business at 6550 Rock Spring Drive, Suite 300, Bethesda, MD 20817.

GENERAL FACTUAL ALLEGATIONS

3. On or about June 25, 2003, the Defendant, Osprey Ship Management, Inc., was doing business within the Commonwealth of Massachusetts.
4. On or about 2003, the Defendant, Osprey Ship Management, Inc., was doing business within the Commonwealth of Massachusetts.
5. On or about June 25, 2003, the Plaintiff, Charles Mendes, was employed by the

Defendant, Osprey Ship Management, Inc..

6. On or about June 25, 2003, the Plaintiff, Charles Mendes, was employed by the Defendant, Osprey Ship Management, Inc., as a seaman, and a member of the crew of the USNS 1ST LT. HARRY L. MARTIN.

7. On or about June 25, 2003, the Defendant, Osprey Ship Management, Inc., owned the USNS 1ST LT. HARRY L. MARTIN.

8. The Defendant, Osprey Ship Management, Inc., chartered the USNS 1ST LT. HARRY L. MARTIN from some other person or entity such that on or about June 25, 2003 the Defendant, Osprey Ship Management, Inc. was the owner pro hac vice of the USNS 1ST LT. HARRY L. MARTIN.

9. On or about June 25, 2003, the Defendant, Osprey Ship Management, Inc., operated the USNS 1ST LT. HARRY L. MARTIN.

10. On or about June 25, 2003, the Defendant, Osprey Ship Management, Inc., or the Defendant's agents, servants, and/or employees, controlled the USNS 1ST LT. HARRY L. MARTIN.

11. On or about June 25, 2003, the Plaintiff, Charles Mendes, was employed by the Defendant, United States of America.

12. On or about June 25, 2003, the Plaintiff, Charles Mendes, was employed by the Defendant, United States of America, as a seaman, and a member of the crew of the USNS 1ST LT. HARRY L. MARTIN.

13. On or about June 25, 2003, the Defendant, United States of America, owned the USNS 1ST LT. HARRY L. MARTIN.

14. The Defendant, United States of America, chartered the USNS 1ST LT. HARRY L. MARTIN from some other person or entity such that on or about June 25, 2003 the Defendant, United States of America was the owner pro hac vice of the USNS 1ST LT. HARRY L. MARTIN.

15. On or about June 25, 2003, the Defendant, United States America, operated the USNS 1ST LT. HARRY L. MARTIN.

16. On or about June 25, 2003, the Defendant, United States America or the Defendant's agents, servants, and/or employees, controlled the USNS 1ST LT. HARRY L. MARTIN.

17. During the course of the litigation, upon information and belief, the USNS 1ST LT. HARRY L. MARTIN will not be in the territorial waters of the United States.

18. On or about June 25, 2003, the USNS 1ST LT. HARRY L. MARTIN was in navigable waters.

19. On or about June 25, 2003, while in the in the performance of his duties in the service of the USNS 1ST LT. HARRY L. MARTIN, the Plaintiff, Charles Mendes, sustained personal injuries.

20. Prior to and at the time he sustained the above-mentioned personal injuries, the Plaintiff, Charles Mendes, was exercising due care.

JURISDICTION

21. This Court has subject matter jurisdiction over this matter pursuant to the Merchant Marine Act of 1920, commonly called the Jones Act, 46 U.S.C. §688 et. seq.

22. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.

§1331, 28 U.S.C. §1332 and 28 U.S.C. §1333, the Suits in Admiralty Act, 46 U.S.C. §741 et seq. and the Public Vessels Act, 46 U.S.C. §781 et seq.

COUNT I

Charles Mendes v. Osprey Ship Management, Inc.

(JONES ACT NEGLIGENCE)

23. The Plaintiff, Charles Mendes, reiterates the allegations set forth in paragraphs 1 through 22 above.

24. The personal injuries sustained by the Plaintiff, Charles Mendes, were not caused by any fault on his part but were caused by the negligence of the Defendant, its agents, servants and/or employees.

25. As a result of said injuries, the Plaintiff, Charles Mendes, has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

26. This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, Osprey Ship Management, Inc., in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), together with interests and costs.

COUNT II

Charles Mendes v. Osprey Ship Management, Inc.

(GENERAL MARITIME LAW - UNSEAWORTHINESS)

27. The Plaintiff, Charles Mendes, reiterates the allegations set forth in paragraphs 1 through 22 above.

28. The personal injuries sustained by the Plaintiff, Charles Mendes, were due to no fault of his, but were caused by the Unseaworthiness of the USNS 1ST LT. HARRY L. MARTIN.

29. As a result of said injuries, the Plaintiff, Charles Mendes has, suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

30. This cause of action is brought under the General Maritime Law for Unseaworthiness and is for the same cause of action as Count I.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, Osprey Ship Management, Inc., in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), together with interests and costs.

COUNT III

Charles Mendes v. Osprey Ship Management, Inc.

(GENERAL MARITIME LAW - MAINTENANCE and CURE)

31. The Plaintiff, Charles Mendes, reiterates all of the allegations set forth in Paragraphs 1 through 22 above.

32. As a result of the personal injuries described in paragraph 19 above, the Plaintiff,

Charles Mendes, has incurred and will continue to incur expenses for his maintenance and cure.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, Osprey Ship Management, Inc., in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for maintenance and cure, together with costs and interest.

COUNT IV

Charles Mendes vs. Osprey Ship Management, Inc.

**(GENERAL MARITIME LAW/JONES ACT - INTENTIONAL/NEGLIGENT
FAILURE TO PROVIDE MAINTENANCE and CURE)**

33. The Plaintiff, Charles Mendes, reiterates the allegations set forth in paragraphs 1 through 22 above.

34. As a result of the personal injuries described in paragraph 19 above, the Plaintiff, Charles Mendes, has incurred and will continue to incur expenses for his maintenance and cure.

35. The Plaintiff, Charles Mendes, has made demand upon the Defendant, Osprey Ship Management, Inc., for the provision of maintenance and cure.

36. The Defendant, Osprey Ship Management, Inc., has negligently, willfully, arbitrarily, and/or unreasonably failed to provide the Plaintiff with maintenance and cure in a timely and adequate manner.

37. As a result of the Defendant's failure to provide the Plaintiff maintenance and cure, the Plaintiff has sustained and will continue to sustain damages, including without limitation, pain of body and anguish of mind, lost time from his usual work and pursuits, medical

and hospital expenses, attorneys fees, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, Osprey Ship Management, Inc., in the amount of TWO HUNDRED THOUSAND DOLLARS, (\$200,000.00), as compensatory damages for failure to pay maintenance and cure, together with costs, interest, and reasonable attorneys fees.

COUNT V

Charles Mendes v. United States of America

(JONES ACT NEGLIGENCE)

38. The Plaintiff, Charles Mendes, reiterates the allegations set forth in paragraphs 1 through 22 above.

39. The personal injuries sustained by the Plaintiff, Charles Mendes, were not caused by any fault on his part but were caused by the negligence of the Defendant, their agents, servants and/or employees.

40. As a result of said injuries, the Plaintiff, Charles Mendes, has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

41. This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, United States of America, in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), together with interest and costs.

COUNT VI

Charles Mendes v. United States of America

(GENERAL MARITIME LAW - UNSEAWORTHINESS)

42. The Plaintiff, Charles Mendes, reiterates the allegations set forth in paragraphs 1 through 22 above.

43. The personal injuries sustained by the Plaintiff, Charles Mendes, were due to no fault of his, but were caused by the Unseaworthiness of the USNS 1ST LT. HARRY L. MARTIN.

44. As a result of said injuries, the Plaintiff, Charles Mendes has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

45. This cause of action is brought under the General Maritime Law for Unseaworthiness and is for the same cause of action as Count V.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, United States of America, in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), together with interest and costs.

COUNT VII

Charles Mendes v. United States of America

(GENERAL MARITIME LAW - MAINTENANCE and CURE)

46. The Plaintiff, Charles Mendes, reiterates all of the allegations set forth in Paragraphs 1 through 22 above.

47. As a result of the personal injuries described in paragraph 19 above, the Plaintiff,

Charles Mendes, has incurred and will continue to incur expenses for his maintenance and cure.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, United States of America, in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), for maintenance and cure, together with costs and interest.

COUNT VIII

Charles Mendes v. United States of America

**(GENERAL MARITIME LAW/JONES ACT - INTENTIONAL/NEGLIGENT
FAILURE TO PROVIDE MAINTENANCE and CURE)**

48. The Plaintiff, Charles Mendes, reiterates the allegations set forth in paragraphs 1 through 22 above.

49. As a result of the personal injuries described in paragraph 19 above, the Plaintiff, Charles Mendes, has incurred and will continue to incur expenses for his maintenance and cure.

50. The Plaintiff, Charles Mendes, has made demand upon the Defendant for the provision of maintenance and cure.

51. The Defendant have negligently, willfully, arbitrarily, and/or unreasonably failed to provide the Plaintiff with maintenance and cure in a timely and adequate manner.

52. As a result of the Defendant's failure to provide the Plaintiff maintenance and cure, the Plaintiff has sustained and will continue to sustain damages, including without limitation, pain of body and anguish of mind, lost time from his usual work and pursuits, medical and hospital expenses, attorneys fees, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Charles Mendes, demands judgment against the Defendant, United States of America, in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), as compensatory damages for failure to pay maintenance and cure, together with costs, interest, and reasonable attorneys fees.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES
RAISED IN COUNTS I - VIII.

Respectfully submitted for the
the Plaintiff, Charles Mendes,
by his attorney,

A handwritten signature in black ink, appearing to read 'Carolyn M. Latti', is written over a horizontal line.

Carolyn M. Latti, Esq. BBO #567394
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
(617) 523-1000

Dated: 5-2-05

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Charles Mendes

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
Bristol

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Osprey Ship Management, Inc., and United States of America

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Carolyn M. Latti, BBO #567394, Latti & Anderson LLP, 30-31 Union Wharf, Boston, MA 02109 (617) 523-1000

ATTORNEYS (IF KNOWN)

05 10912 DPW

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)☒ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties IN Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State ☒ 1 ☐ 2Citizen of Another State ☐ 2 ☐ 3Citizen or Subject of a Foreign Country ☐ 3 ☐ 4Incorporated or Principal Place of Business in This State ☐ 4 ☒ 5Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 6Foreign Nation ☐ 6 ☐ 7**IV. NATURE OF SUIT** (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment Of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury: Med Malpractice <input type="checkbox"/> 365 Personal Injury: Product Liability <input type="checkbox"/> 368 Asbestos Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title X/A <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

☐ 1 Magistrate Proceeding

Original

☐ 2 Removed from☐ 3 Remanded from

Transferred from

☐ 4 Reinstated or☐ 5 another district

Appeal to District

☐ 7 Judge from☐ 6 Multidistrict**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 46 USC Sec 688 et. seq., 28 USC, Sec 1331, 28 USC, Sec. 1332, 28 USC, Sec 1333, 46 USC Sec 741 et seq, 46 USC, Sec 781 et. seq.

VII. REQUESTED IN

CHECK IF THIS IS A CLASS ACTION

DEMAND \$1,600,000.00

Check YES only if demanded in

complaint:

COMPLAINT: ☐ UNDER F.R.C.P. 23JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S)** (See Instructions)
IF ANY

JUDGE

DOCKET NUMBER

DATE 5-2-05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) MENDES, CHARLES V. OSPREY SHIP MANAGEMENT, INC., ET AL

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

 I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120, or AO 121 for patent, trademark or copyright cases

 X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. V. 150, 152, 153.

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3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court. NONE

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☒A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME CAROLYN M. LATTI, LATTI & ANDERSON LLPADDRESS 30-31 UNION WHARF, BOSTON, MA 02109TELEPHONE NO. (617) 523-1000